*THE HON'BLE SRI JUSTICE P.S.NARAYANA

+W.P.No.10733 of 2007

% 27-11-2007

Meher & Company,
Represented by its Managing Partner
B.Prabhakar Rao s/o.Mallaiah,
Aged 44 years, R/o.84, HUDA complex,
Tarnaka, Hyderabad-500006. ..
Petitioner

Vs.

$ Union Bank of India,
Dilsukhnagar Branch,
Rajdhani Theatre Complex,
Dilsukhnagar, Hyderabad
Represented by its Authorised Officer. ..
Respondent

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Sri P.Venugopal

^ Counsel for respondent : Sri P.Suresh, Standing Counsel for
respondent

? CASES REFERRED:

1.(1993) 1 SCC 445
2. (2005) 6 SCC 138

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.10733 of 2007

Date : 27-11-2007

Between :

Meher & Company,
Represented by its Managing Partner
B.Prabhakar Rao s/o.Mallaiah,
Aged 44 years, R/o.84, HUDA complex,
Tarnaka, Hyderabad-500006. ..
Petitioner

And

Union Bank of India,
Dilsukhnagar Branch,
Rajdhani Theatre Complex,
Dilsukhnagar, Hyderabad
Represented by its Authorised Officer. ..
Respondent

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.10733 of 2007

ORDER:

1. Heard Sri P.Venugopal, the learned Counsel representing the writ petitioner and Sri P.Suresh, the learned Standing Counsel representing the respondent.

2. This Court ordered notice before admission on 24-5-2007 and also made the following order in W.P.M.P.No.13487/2007:

> "The sale finalized in favour of the petitioner, in pursuance of the auction held to sell the properties namely 85 house plots in Sy.Nos.22, 23, 29, 33 and 36 of Toopranpet village (Sri Shiridi Sai Nagar),

Choutuppal Mandal, Nalgonda District, appears to have been cancelled on the ground that there was some delay on the part of the petitioner in payment of the instalment amounts.

The learned Counsel for the petitioner invited my attention to para (19) of the affidavit filed in support of the Writ Petition in which petitioner has undertaken to pay the entire balance amount.

Having considered the submissions of the learned Counsel for the petitioner, I am of the view that if the properties are sold pending the hearing of this case, the petitioner would suffer irreparable loss. However the petitioner, in order to prove his bona fides, shall deposit the sale amount as a condition for stay of sale proposed to be made by the respondent.

In the aforementioned facts and circumstances, I deem it appropriate to direct the respondent not to proceed with the sale, in pursuance of the notification dated 16.5.2007 published in newspapers on 17.5.2007 with respect to 85 house plots in Sy.Nos.22, 23, 29, 33 and 36 of Toopranpet village (Sri Shiridi Sai Nagar), Choutuppal Mandal, Nalgonda District, subject to the following conditions:

(a) The petitioner shall pay Rs.2 crores within 24 hours from now;

(b) The petitioner shall pay a further sum of Rs.2,76,57,506/- on or before 31.5.2007;

(c) The petitioner shall pay the balance amount i.e., Rs.2,87,86,440/- on or before 30.6.2007.

It is made clear that in default of any of the above conditions, the interim stay shall stand

automatically vacated and it shall then be open to the respondent to proceed with the sale of the properties as proposed in the notification dated 16.3.2007."

Again, On Being Mentioned, in W.P.M.P.No.13994/2007, on 30-5-2007, the undernoted order was made by this Court :

"By an order of this Court passed on 24.5.2007, interim directions were given subject to the conditions that the petitioner shall deposit certain amounts. It is brought to my notice that in condition (b), contained in the said order, a typographical mistake occurred to the effect that instead of a sum of Rs.76,57,506/-, a sum of Rs.2,76,57,506/- is directed to be paid by 31.5.2007. Therefore, this mistake is required to be corrected. Accordingly, the order dated 24.5.2007 is modified by substituting the figure of "Rs.2,76,57,506/-" with the figure of Rs.76,57,506/-" to be paid by 31.5.2007.

The learned Counsel for the petitioner also submitted that in condition (a) of the order, the petitioner was directed to pay a sum of Rs.2 crores within 24 hours. He says that as the order copy could not be furnished by the Registry within 24 hours, the payment offered by the petitioner was not received by the respondents.

In view of the above, condition mentioned in (a) of the order dated 24.5.2007 is modified and the time is extended till 31.5.2007 to pay the said sum of Rs.2 crores."

3. The Writ Petition is filed for Writ of Mandamus declaring the action the respondent in canceling the sale confirmed in favour of the petitioner vide its letter No.ADV/CM/2007 dated 16-3-2007 with respect to 85 House properties in S.Nos.22, 23, 29, 33 & 36 of Toopran village (Sri Shiridi Sai Nagar), Choutuppal Mandal, Nalgonda District and the consequential action in issuing tender notification dated 16.5.22007 inviting the tenders for sale of the same as arbitrary, illegal and violative of principles of natural justice and to pass such other suitable orders. The said letter dated 16-3-2007 reads as hereunder :

UNION BANK OF INDIA
DILSUKHNAGAR BRANCH
Rajadhani Theatre Complex, Dilsukhnagar, Hyderabad
Ph: 23460147/148

Ref: DIL: 357 Date : 16-03-2007

M/s. Meher & Company
Hyderabad

Dear Sir,

Sub: Declaration of successful bidder in the auction sale of 85 house properties – Toopranpet – Regarding.

We wish to inform you that you have become the successful bidder in the auction (by sealed tenders)

held today i.e., 16-03-2007 for sale of 85 house properties situated in Shirdi Sai Nagar, Tooparanpet village, Choutuppal Mandal, Nalgonda District for a total amount of Rs.5,64,44,000/- (Rupees Five Crores Sixty Four Lakhs Forty Four Thousand only).

Further, you are required to pay 15% of the total amount viz., Rs.84,66,600/- (Rupees Eighty Four Lakhs Sixty Six Thousand and Six Hundred only) on or before 20-03-2007 failing which the next tenderer will be given the option and the sale will be confirmed in their favour and the EMD would be forfeited.

Upon receipt of 15% of the amount the sale will be confirmed in your favour. Out of the balance sale consideration you are required to pay 34% viz., Rs.1,91,90,960/- (Rupees one Crore ninety one lakh ninety thousand nine hundred sixty only) on or before 31-03-2007 failing which the 15% of the amount which you pay on or before 21-03-2007 would be forfeited, and we would resale the properties.

The total balance consideration is to be paid by 31-05-2007.

We undertake to confirm the sale of all the 85 plots on receipt of 15% of the total amount viz., Rs.84,66,600/- (Rupees Eighty four Lakhs Sixty Six Thousand and Six Hundred only) on or before 21-03-2007 and would issue sale certificate/certificates in your name or in the names of your nominees separately.

After receipt of the sale consideration, we will issue the sale certificates and also register/execute the

sale deed/deeds in your favour or in favour of your nominees in respect of all the 85 plots either in lot or lots or separately.

We request you to convey your acceptance of the above agreed terms.

Thanking you,

Yours faithfully,

Sd/-

(A.Ravindra Rao)

Authorised Officer & Chief Manager

4. Sri P.Venugopal, the learned Counsel representing the petitioner had taken this Court through the respective pleadings of the parties, the affidavit filed in support of the Writ Petition, the counter affidavit and also the reply affidavit and several of the material papers and would submit that the tender notice itself is devoid of particulars and in the event of the respondent giving a clear title, the petitioner is ready and willing to pay the amount along with even interest in the event of this Court directing such payment to be made. The learned Counsel also further pointed out that the alleged default, if any, is because of the convincing reasons which had been explained and hence in the facts and circumstances of the case, the Writ Petition to be allowed.

5. Per contra, Sri Suresh, the learned Standing Counsel representing the respondent-Bank would

contend that the parties are governed by the terms and conditions of the contract, the conditions specific in the tender notice and despite the fact that certain opportunites had been given, the petitioner was unable to make the payment. The learned Counsel also would explain that even the conditional order made by this Court had not been complied with and absolutely there are no bona fides. Having participated in pursuance of the tender notice with eyes wide open, now the petitioner cannot contend otherwise on the ground of either defective title or on any other similar ground whatsoever. In the light of the clear stand taken in the counter affidavit, the subsequent steps taken by the respondent-Bank being well justified, the same not to be disturbed by this Court.

6. Heard the Counsel.

7. The petitioner is a partnership firm doing business in land development and building. Accordingly, with difficulty the petitioner-firm had raised funds and commenced its business. Further, it stated that the respondent issued notification dated 5-3-2007 and published the same in Eenadu Telugu Daily News Paper dated 6-3-2007 and the same had been issued in purport of exercise of powers under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (Act 54 of 2002)

(hereinafter in short referred to as “Act” for the purpose of convenience) r/w. Rules 6(1)(b) and 8(5)(b) of the Security (Enforcement) Rules, 2002 (hereinafter in short referred to as “Rules” for the purpose of convenience) and thereby invited sealed tenders for sale of 85 residential structures with open site admeasuring 200, 400 and 600 sq. yards with house properties in S.Nos.22, 23, 29, 33 and 36 of Toopran village of Sri Shiridi Sai Nagar, Choutuppal Mandal, Nalgonda District “as is where is basis”. The last date for submission of the tenders was notified as 16-3-2007 till 12.00 P.M. The tenders were to be opened on the same day at 5.00 P.M. and the final bidder was to be announced on the same day. Further, it is stated the Earnest Money Deposit of 1% of the Reserve Price shall have to be paid Rs.5,75,000/- by way of Pay Order/Demand Drafts payable at Hyderabad in favour of the respondent. Here itself, it may be appropriate to have a glance at Section 13(2) of the Act and Rules 6(1)(b) and 8(5)(b) of the Rules. Section 13 of the Act deals with **Enforcement of Security Interest** and Section 13(2) reads as hereunder :

> “Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect

of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4)".

Rule 6 of the Rules deals with **Sale of movable secured assets** and Rule 6(1)(b) reads as hereunder :

"The authorized officer may sell the movable secured assets taken possession under sub-rule (1) of Rule 4 in one or more lots by adopting any of the following methods to secure maximum sale price for the assets, to the so sold –

(a)…..

(b) inviting tenders from the public "

Rule 8 of the Rules deals with **Sale of immovable secured assets** and Rule 8(5)(b) reads as hereunder :

"Before effecting sale of the immovable property referred to in sub-rule (1) of Rule 9, the authorized officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or an part of such immovable secured asset by any of the following methods –

(a)…….

(b) by inviting tenders from the public"

Further it is stated that in pursuance of the said notification, the petitioner had participated in the tenders by paying the Earnest Money Deposit of Rs.5,75,000/- representing 1% of the reserve price and became the highest bidder and consequently the respondent issued letter dated 16-3-2007 confirming the petitioner as the successful bidder in the auction for a sum of Rs.5,64,44,000/- and that 15% of the said amount i.e., Rs.84,66,600/- shall have to be paid on or before 20-3-2007. It is further mentioned in the said letter that out of the balance sale consideration, an amount of Rs.1,91,90,960/- representing 34% of the sale consideration shall have to be paid on or before 31-5-2007 and it is also mentioned that upon receipt of the said sale consideration they will issue a sale certificate and execute and register the sale deed in favour of the petitioner or its nominees with respect to the said 85 house properties along with the site either in lot or lots. It is also averred that in between 16-3-2007 and 20-3-2007, 17th and 18th March 2007 happened to be Saturday and Sunday, 20th being Ugadi and 19th was the only working day. Moreover even 27-3-2007 happened to be a public holiday and 31st March is the day for Annual

Financial Year closing and it was also a Saturday. In spite of lack of sufficient working days, still the petitioner could raise Rs.6,26,000/- and also obtained the sanction from the Andhra Bank, Hanamkonda issued a letter for an amount of Rs.78,48,000/- and Demand Draft of Rs.6,26,600/-, which both put together comes to Rs.84,66,000/-, which represents the first instalment payable on or before 20-3-2007. With the said arrangement, the petitioner approached the respondent on 30-3-2007 and since the same was offered beyond 20-3-2007, the respondent informed the petitioner that it is not within the power at its level to accept and t matter is being referred to the Central Office for their decision. It is also further stated that when the petitioner had not received any reply thereto, the petitioner made another representation dated 3-4-2007 reminding the respondent about the payment proposed to be made and also issue necessary instructions so as to facilitate the petitioner to pay the balance sale consideration. It is further stated that Andhra Bank, Hanamkonda vide letter dated 13-4-2007 had forwarded the Demand Drafts for an amount of Rs.29,40,000/- which in accordance with its sanction dated 30-3-2007. However, the respondent-Bank had not responded either to the previous representation dated 30-3-2007 or to the representation dated 3-4-2007. In view

thereof, the petitioner had again made a representation on 17-4-2007 requesting them to issue necessary orders to accept the amounts as the petitioner was ready to pay the entire amount with interest on the delayed period and also requested to furnish the title deeds and the link documents. When no action was taken pursuant to the aforesaid representations, the petitioner again submitted a representation dated 19-4-2007 to the Central Office of the respondent located at Mumbai and requested them to take appropriate action and do justice to the petitioner. It is also further stated that on 25-4-2007, the petitioner received the letter of the respondent dated 11-4-2007 inter alia cancelling the sale confirmed in favour of the petitioner and also alleged that the E.M.D. of Rs.5,75,000/- also stood forfeited and by the said letter the Demand Drafts submitted by the petitioner earlier were also returned. The said letter dated 11-4-2007 reads as hereunder :

UNION BANK OF INDIA
Dilsukhnagar Branch
Rajadhani Theatre complex,
Hyderabad
Phones: 23420147/148

Ref. No. Date : 11-04-2007

M/s.Meher & Co.

84, HUDA complex,
Taranaka, Hyderabad.

Sub: Auction sale of 85 houses at Toorpranpet (v),
Chowtuppal (M), Rangareddy District. – Reg.

This has reference to your letters No.43/2007 dated 30-03-2007 and 48.2007 dated 03-04-2007 along with the pay order dated 30-03-2007 for Rs.6,26,600/- drawn in favour of Union Bank of India and the sanction letter dated 30-03-2007 of Andhra Bank, Personal Banking Center, Hanumkonda.

We wish to inform you that since you have not complied with the terms of the confirmation of sale vide letter No.ADV/CM/2007 dated 16-03-2007 the sale in your favour stands cancelled and the E.M.D. of Rs.5.64 Lakhs forfeited forthwith.

Therefore, we are returning herewith the pay order bearing No.946649 for Rs.6,26,000/- dated 30-03-2007 issued by Andhra Bank, Himayathnagar, Hyderabad.

Please note that we would entertain no further correspondence on the subject.

Yours faithfully,
Sd/-
(A.Ravindra Rao)
Authorised Officer
Encl: As mentioned above
C.C. **DGM RO, Hyderabad.**

While the matters stood thus, the respondent-Bank published in the Eenadu Telugu Daily News Paper dated

17-5-2007, the notification dated 16-5-2007 thereby once again inviting the tenders with respect to the property in question fixing last date for receipt of the tenders as 1-6-2007, upto 3.00 P.M. and opening and sale being the same day. The reserve price is fixed at Rs.5,63,59,000/-. Aggrieved by the said action of the respondent, the present Writ Petition is filed. The said action without affording any opportunity is challenged on the ground of principles of natural justice. Several representations made and the repeated requests also had been referred to in the affidavit filed in support of the Writ Petition. Further it is stated that the notification dated 16-5-2007 published in Eenadu Telugu Daily Newspaper dated 17-5-2007 is contrary to Rule 9 of the Rules. The said Rule 9 of the Rules dealing with **Time of sale, issue of sale certificate and delivery of possession** reads as hereunder :

(1) No sale of immovable property under these rules shall take place before the expiry of thirty days from the date on which the pubic notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) or notice of sale has been served to the borrower.

(2) The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorised officer and shall be subject to

confirmation by the secured creditor;

Provided that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price, specified under sub-rule (5) of Rule 9:

Provided further that if the authorised officer fails to obtain a price highest than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price.

(3) On every sale of immovable property, the purchaser shall immediately pay a deposit of twenty-five per cent of the amount of the sale price, to the authorised officer conducting the sale and in default of such deposit, the property shall forthwith be sold again.

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the parties.

(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

(6) On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorised officer exercising the powers of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in

the form given in Appendix V to these rules.

(7) Where the immovable property sold is subject to any encumbrances, the authorised officer may, if he thinks fit, allow the purchaser to deposit with him the money required to discharge the encumbrances and any interest due thereon together with such additional amount that may be sufficient to meet the contingencies or further cost, expenses and interest as may be determined by him.

(8) On such deposit of money for discharge of the encumbrances, the authorised officer may issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make the payment accordingly.

(9) The authorised officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above.

(10) The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not.

It is also stated that the respondent-Bank being an authority within the meaning of Article 12 of the Constitution of India, cannot resort to such arbitrary and illegal action. The respondent-Bank ought to have realized that the petitioner had undertaken to pay the amount with interest from the dates when the amounts fell

due till the payment and in any event the respondent-Bank would be benefited by the offer of the petitioner as the reserve price notified is Rs.5,63,59,000/-, whereas by the offer of the petitioner, the respondent-Bank would fetch Rs.5,64,44,000/- and interest thereon which the petitioner is prepared to pay the lending rate of interest from 20-3-2007. Further specific stand had been taken that the respondent ought to have notified the final date for completing the entire transaction as 31-5-2007. It is further stated that the respondent ought to have noticed that the petitioner was required to pay Rs.2,76,57,506/- by 31-3-2007 and the balance of Rs.2,87,86,440/- by 31-5-2007 and in the said regard the petitioner is undertaking as follows:

i) Immediately to pay Rs.2,00,00,000/-

ii) On or before 31-5-2007 an amount of Rs.76,57,506/- and the interest due from 20-3-2007 at the lending rate on Rs.2,76,57,506/-; and

iii) To pay on or before 23-9-2007 (that is four months from now) the balance amount of Rs.2,87,86,440/- along with interest thereon at the lending rate of the respondent-Bank from 31-5-2007.

It is further reiterated that the offer of the petitioner is more beneficial to the respondent-Bank than going through the tender process again wherein the reserve price is fixed at

lesser than the one notified in the previous notification. In such circumstances, the writ petitioner approached this Court.

8. The interim order and the modified order made by this Court already had been specified supra.

9. W.V.M.P.No.1398/2007 is filed by the respondent-Bank to vacate the interim order. It is averred in para-3 of the counter affidavit that the respondent-Bank opened two bids on 6-6-2007 received pursuant to the notification. When the petitioner committed default, one M/s. Lakshmi Constructions was declared as successful bidder who offered highest amount of Rs.5,70,00,000/- and as such the Writ Petition itself became infructuous. Further it is stated that the Writ Petition is not maintainable for the reason that the relationship with the Bank in respect of bid entered the realm of contract and on default of the conditions, the respondent-Bank is given liberty to proceed and take further steps pursuant to the notification dated 16-5-2007. In relation to the allegations in para-3 of the affidavit that the respondent-Bank issued notification dated 5-3-2007 which was published in Eenadu Telugu Daily on 6-3-2007 inviting sealed tenders for the sale of 85 residential structures with open site admeasuring different extents with house properties in S.No.22, 23, 29, 33 and 36 of Toopran village,

Choutuppal Mandal, Nalgonda District, as is where is basis, the same had been admitted. Further it is stated that the last date for submission of tenders was fixed as 16.3.2007 by 12 noon. The tenders were opened as per schedule and the respondent-Bank received three bids and they were opened according to the schedule on 16-3-2007. According to the notification, the earnest money representing 1% of the reserve price will have to be paid by way of pay order or demand draft payable at Hyderabad in favour of the respondent-Bank on the very same day. The details of the persons and the bids submitted are as hereunder :

a) Mehar & Company	Rs.5,64,44,000/- (petitioner)
b) S.R. Associates	Rs.5,64,40,000.-
c) M.K.Shah and others	Rs.4,05,00,000/-

It is further stated that as stated in the affidavit filed in support of the Writ Petition itself, the petitioner was declared as highest bidder having offered the highest amount and the same was informed to him by a letter of even date mentioning specifically the conditions subject to which the offer of the petitioner was accepted and the said conditions read as hereunder:

a) Payment of 15% of the bid amount i.e., Rs.84,66,600/- on or before 20-3-2007;

b) 34% of the bid amount i.e., Rs.1,91,90,960/- to

be paid on or before 31-3-2007 failing which 15% of the amount already paid on or before 20-3-2007 would be forfeited and the properties would be put to re-sale;

c) Remaining balance amount of the bid to be paid by 31-5-2007.

It is also further stated that it is admitted by the petitioner that no amount was paid on or before 20-3-2007, not even a pie, on his own averments contained in paras 6 and 7 of the affidavit and he approached the respondent-Bank only on 30-3-2007. The other allegation that the petitioner approached the respondent-Bank with Rs.84,66,600/- (being the first instalment payable on or before 20-3-2007) on 30-3-2007 is absolute falsehood. The petitioner approached the respondent-Bank on 31-3-2007 with a letter said to have been issued by the Andhra Bank, Hanamkonda branch dated 31-3-2007 in its Ref.No.0206/28/458 addressed to be respondent-Bank stating that they inspected housing venture at Toopran village, Choutuppal Mandal, Nalgonda District consisting of 85 houses offered for sale to the petitioner and that 16 interested persons had approached the said Bank for housing finance each for Rs.4,90,000/- and all the applications are processed and that the said Bank will release the amounts on the date of registration on

completion of the year ending statutory audit most probably in 7 to 10 days and this is not in compliance with the terms of the bid. Neither the first instalment of Rs.84,66,600/- payable on or before 20-3-2007 nor the second instalment of Rs.1,91,90,960/- payable on or before 31-3-2007 was paid. It is also averred that the respondent-Bank received an undated letter from Andhra Bank, Hanamokonda branch to the effect that the said Bank disbursed six housing loans at Rs.4,90,000/- each to the persons mentioned therein and that the houses may be registered in their favour and the title deeds to be handed over. Three demand drafts are dated 13-4-2007 and the total amount covered by the said three demand drafts is Rs.29,40,000/- only. The total amount due by then is Rs.2,76,560/-. There is an utter failure on the part of the petitioner to comply with the terms of the bid which are accepted by the petitioner with wide-open eyes. The allegation of the petitioner that he is ready with the money is hopelessly false and it is a false allegation even to his knowledge. The conduct of the petitioner therefore indicates his litigious attitude. Further it is averred that it is not possible for the respondent-Bank to go on waiting for the other bank i.e., Andhra Bank, Hanamkonda branch to complete its statutory audit and then release the amounts. The respondent-Bank has nothing to do with

Andhra Bank, Hanamkonda branch. The petitioner was to comply with the conditions of the bid which he accepted but which he utterly failed to comply. The respondent-Bank as per the terms of the conditions of acceptance of the bid of the petitioner is not supposed to wait for the future payment of money by a financial institution. Further it is averred that three demand drafts referred to supra were returned to Andhra Bank, Hanamkonda branch with a covering letter dated 16-4-2007. The Andhra Bank, Hanamkonda branch by its letter dated 18-4-2007 in its reference 0206/HL/22(5) addressed to the respondent-Bank stated that they received the demand drafts and the letter and stated that the matters may please be closed. Therefore it is clear that the petitioner never had the money with him to comply with the terms of acceptance of his bid and he did not even attempt to pay the said amount. Obviously, the petitioner is trying as a broker in between some third parties for the sale of the properties and get commission. Further it is averred that the communications and letters written by the petitioner referred to in his affidavit are nothing but attempts to mislead people and create confusion and they do not contain an iota of truth. The allegation that the petitioner was ready to pay the entire amount with interest is false

and specifically denied. In view of the aforesaid facts and in the circumstances, the respondent-Bank had no other alternative except to issue a fresh notification inviting tenders. The fresh tender dated 16-5-2007 was published on 17-5-2007 and till 16-5-2007 the petitioner had not even attempted to pay the amount by producing the original demand drafts covering the entire amount or at least the first two instalments. As per the notification dated 16-5-2007, time was given for submission for tenders till 1-6-2007 upto 3 P.M. and the opening of the bids was on the same day. The reserve price was fixed as Rs.5,63,59,000/- and there is no flaw or any irregularity in issuing the notification as the sale in favour of the petitioner was cancelled for non-payment of the amount. When once the sale in favour of the petitioner was cancelled for non-compliance of the terms of the sale, which fact was informed to the petitioner, issuing the second notification calling for tenders dated 16-5-2007 is not in violation of the principles of natural justice. Further, the readiness of the petitioner to pay the entire sale consideration had been specifically denied. Further it is stated that even the allegation of the petitioner in his affidavit is that he was ready to pay the entire sale consideration provided the respondent-Bank condones non-payment of first instalment on 20-3-2007 and the

second instalment on 31-3-2007. The petitioner with wide-open eyes accepted the conditions of sale and the schedule of payments and he is aware of the Bank holidays and reference to holidays etc., is only a ruse to cover up his utter default in complying with the time schedule for payment as per the terms of acceptance of his bid. Further specific stand had been taken that neither the first instalment nor the second instalment had been paid by the petitioner. In para-15 of the counter affidavit it is averred that the allegation of the petitioner that he offered Rs.5,64,44,000/- and that is the highest price than what would fetch in pursuance of the second notification dated 16-5-2007 is not correct. It is stated that pursuant to the notification, highest amount received is Rs.5,70,00,000/-. Further, the payment schedule offered by the petitioner in his own affidavit sworn to solemnly in para-19 had been pointed out. In para-16, it is averred that the most relevant fact which clinches the issue is that this Court by order dated 24-5-2007 stated as hereunder :

> "In the aforementioned facts and circumstances, I deem it appropriate to direct the respondent not to proceed with the sale, in pursuance of the notification dated 16.5.2007 published in newspapers on 17.5.2007 with respect to 85 house plots in Sy.Nos.22, 23, 29, 33 and 36 of Toopranpet village (Sri Shiridi Sai Nagar), Choutuppal Mandal,

Nalgonda District, subject to the following conditions:

(a) The petitioner shall pay Rs.2 crores within 24 hours from now;

(b) The petitioner shall pay a further sum of Rs.2,76,57,506/- on or before 31.5.2007;

(c) The petitioner shall pay the balance amount i.e., Rs.2,87,86,440/- on or before 30.6.2007.

It is made clear that in default of any of the above conditions, the interim stay shall stand automatically vacated and it shall then be open to the respondent to proceed with the sale of the properties as proposed in the notification dated 16.3.2007."

which was modified by its order dated 30-5-2007 as:

"In view of the above, condition mentioned in (a) of the order dated 24-5-2007 is modified and the time is extended till 31-5-2007 to pay the said sum of Rs.2 crores".

It is also stated that interim stay granted by this Court in W.P.M.P.No.13487/2007 as modified by W.P.M.P.No.13994/2007 automatically gets vacated if the petitioner commits default of any of the above conditions of deposit. The interim stay shall stand automatically vacated. What is more, there is a positive direction by this Court that the respondent-Bank to proceed with the sale of the properties as proposed in the notification dated 16-5-2007. It is also stated that the interim stay granted by

this Court in W.P.M.P.No.13487/2007 as modified in W.P.M.P.No.13994/2007 stood automatically vacated and the respondent-Bank is entitled to proceed further pursuant to the notification dated 16-5-2007 and therefore there is no necessity to file any petition for vacating the interim order in view of the fact that it automatically stood vacated. However, being a Nationalised Bank, the respondent-Bank is bringing these facts to the notice of this Court for proceeding further pursuant to the notification dated 16-5-2007. The conduct of the petitioner is clear and he has no money to pay and is indulging in litigation. The first instalment was to be paid on or before 20-3-2007, the second instalment was to be paid on or before 31-3-2007. It is further stated that public money is involved and till today no amount is paid towards the instalments even though three months elapsed. The conduct of the petitioner clearly shows his mala fide intention to drag the respondent-Bank to litigation. Further, all the other allegations contained in the affidavit filed in support of the Writ Petition questioning the notification issued on 16-5-2007 are untenable and without any substance. The petitioner having failed to comply with the order of this Court which was passed on his own solemn undertaking given to this Court is not

entitled for any indulgence at the hands of this Court. The petitioner has no intention to pay and he wants to act as a broker between some third party purchasers and the Bank. Further, specific stand has been taken that in the light of the orders made by this Court though it is to be taken that the interim order already automatically stood vacated, inasmuch as the respondent-Bank being a Nationalised Bank thought it fit to file the application to vacate the interim order and in such circumstances, the Writ Petition being devoid of merit, the same is liable to be dismissed.

10. A lengthy reply affidavit is filed with certain additional material papers to substantiate the further stand. It is stated in the reply affidavit that the respondent-Bank is a State within the meaning of Article 12 of the Constitution of India and ought to have been very very meticulous in giving details with regard to the property that is sought to be auctioned, but it never gave any details. Further, the following documents had been pointed out :

1. Memo No.878/04-B1 (Pts), dated 25-8-2005 issued by the District Collector, Nalgonda;
2. Letter in Roc.No.1318/07/B4 (Pts) dated 16-10-2007 addressed by the District Panchayat Officer to the petitioner-company;
3. Letter in Roc.No.10054/2007/V.Cell(RTI) dated 5-10-2007 from the Directorate of Town and

Country Planning, Government of Andhra Pradesh to the petitioner company.

4. Letter Roc.No.10288/2007/V.Cell (RTI) dated 10-10-2007 from the Directorate of Town and Country Planning, Government of Andhra Pradesh to the petitioner company stating that it is an unauthorised layout.

5. Memo No.4562/2005 dated 10-10-2007 issued by the Tahsildar, Choutuppal Mandal to the petitioner.

It is stated that from the aforementioned documents it is apparent that the plots in question are not at all covered by any sanctioned layout accorded by any statutory competent authority and no permission had been granted to convert the agricultural land into residential property. It is further stated that the facts stated in the present reply affidavit were not brought by the respondent-Bank to the notice of general public before putting the property to auction and the same been brought to the notice of the general public at the time of auction, perhaps it would have been a different scenario. Further, it is stated that except stating in the paper notification that the property is being put to auction, the other defects were not mentioned by the respondent-Bank. Nevertheless, as a Managing Partner of the petitioner company when the petitioner questioned the Bank whether the property is free from

defects, if any, the respondent-Bank stated that in exercise of the powers vested in it under the provisions of the Act, the respondent-Bank has put the property to sale and since the property had been mortgaged to the respondent-Bank, the property does not suffer from any kind of defect/defects. It is stated that the said statement of the respondent-Bank is incorrect as is evident from the correspondence referred to supra. The respondent-Bank would sanction housing loans against mortgage only when there are no defects in the property and since the respondent-Bank is a Nationalised Bank and acts as per the guidelines of the Reserve Bank of India, the petitioner was under the bona fide impression that the property is without any defects. It is also stated that in the auction, the petitioner became the highest bidder and had paid a sum of Rs.5.75 lakhs as E.M.D. Per force the respondent-Bank had taken a letter from the petitioner o 16-3-2007 and the conditions which are stated in the said letter appeared for the first time and none of the terms and conditions mentioned in the said letter form part of the notification. It is also further stated that even now the petitioner is prepared to pay the entire sale consideration to the respondent-Bank including interest for the delay caused, but the respondent-Bank gives the property to the petitioner with clear title as otherwise it would amount to

respondent-Bank playing fraud on a subject. The respondent-Bank has to be fair enough and it cannot enrich itself by such transactions. It is reiterated by filing certain certificates issued by the Bankers of the petitioner showing his bona fides that the petitioner is prepared to deposit the entire amount together with interest and if the respondent-Bank gives the property with clear title. It is also further averred that in the counter affidavit it is stated that the petitioner is a defaulter which is incorrect. It is also stated in the counter affidavit that the property in question is being given to M/s.Laxmi Constructions, but the certificate issued by the Registrar of Firms proves that there is no such firm registered with the said name. The petitioner being the highest bidder, is prepared to honour its bid. Further, it is stated that such of those allegations which are not specifically admitted are deemed to have been denied. The respondent-Bank wants to sell the said property to M/s.Laxmi Constructions for Rs.5.70 crores whereas the petitioner's bid amount together with interest as on date comes to Rs.5.82 crores and thus it can be seen that the respondent-Bank would be benefited by selling the property to the petitioner. The respondent-Bank being a Nationalised Bank and being 'State' within the meaning of Article 12 of the Constitution of India, has

to see that it is benefited from the commercial transaction and for the sake of some one it should not lose its profit. Further it is also averred that when the petitioner approached the respondent-Bank for payment of the amounts, the respondent-Bank for the reasons best known to it had refused to receive the same. Further it is stated that the petitioner had filed proof of attempt to pay the amount by the petitioner, to be read as part and parcel of the present reply affidavit. It is specifically averred that the entire auction of the respondent-Bank is contrary to the provisions of the Act. It is averred in para-4 of the reply affidavit that the respondent-Bank is guilty of *suppresio veri* and *suggestio falsi* since it did not mention about the first notification dated 5-3-2007 in which the petitioner became the successful bidder. The respondent-Bank is put to strict proof that the petitioner became a defaulter. On the other hand, M/s. Laxmi Constructions did not participate in the first auction that was knocked out by the petitioner. In the first notification one M/s.S.A. Associates competed along with the pin the bid unsuccessfully. Further, M/s.Laxmi Constructions had been set up by M/s.S.A. Associates to knock away the tender. The averment that the Writ Petition became infructuous is not correct and the respondent-Bank is put to strict proof of the same. When the petitioner was

offering money and the same was being refused by the respondent-Bank, the petitioner had no option but to file the instant Writ Petition. Further it is stated that the averment that the interim order granted by this Court got vacated on its own terms is untenable. Further, when the modified interim order was issued on 30-5-2007, this Court directed the petitioner to pay Rs.2 crores within 24 hours and in obedience of the said order, the petitioner approached the respondent-Bank with demand drafts for Rs.2 crores and the respondent for the reasons best known had refused to receive the same. Though the petitioner could have filed contempt case against the respondent-Bank, to maintain cordial relationship and to materialize the deal, the petitioner had not chosen to do so. Thus, the onus lies on the respondent-Bank in this regard. In view of said facts, the respondent-Bank cannot contend that the interim order got vacated on its own terms and the Writ Petition became infructuous. Further it is averred that even now the position remains the same. Further, the correspondence interse specified supra would go to show that the respondent-Bank had miserably failed in granting housing loans to 85 individuals and sought to auction the said property without there being any approved layout by the competent authority. Relating

to the averments made in para-4, it is stated that the averment that the Writ Petition is not maintainable is not correct. The respondent-Bank being 'State' within the meaning of Article 12 of the Constitution of India has to act fairly and justly apart from obeying the orders of this Court, but had deliberately refused to receive the amount of Rs.2 crores which was offered by the petitioner pursuant to the interim order of this Court. The respondent-Bank had never given anything in writing with regard to cancellation or forfeiture of the E.M.D. Further, it is stated that as per Rule 9(4) of the Rules, the Authorised Officer has got ample power to extend the time for payment. In relation to the averments in para-5, it is stated that the respondent-Bank for the reasons best known to it had described the property in two different ways in the notification. On a perusal of both the notifications, it would be clear that the respondent-Bank having come to know of the defects in the property had chosen to change the description of the property. Further, the respondent-Bank had not chosen to incorporate the payment schedule in the notification and only to get rid of the petitioner in the auction and to help a third party, had deliberately prepared the payment schedule without giving much time as normally given in such transactions. The respondent-Bank also did not mention about the forfeiture of the E.M.D. either in the

notification or in the payment schedule. Further, curiously the respondent-Bank in the payment schedule had put a condition that if 34% of the bid amount is not paid, the 15% amount already paid would be forfeited. In view of this, the petitioner did not dare to pay the second instalment i.e., 34% as there is a dangerous clause that if the second instalment is not paid within three days, the 15% amount already paid would be forfeited. Though the petitioner had an understanding with another Nationalised Bank i.e., Andhra Bank, and the letters issued by the Andhra Bank were submitted to the respondent-Bank, the respondent-Bank in stead of accepting the same, had stated that it had referred the matter to Central Office and to that effect issued a letter and now the respondent-Bank is taking a different stand stating that the said proposal was refused and hence it is deemed that the petitioner became a defaulter. With regard to the averments in para-6, it is stated that since 17th and 18th March happened to be Saturday and Sunday and 20th being Ugadi and in between there was only one working day on 19th, the petitioner could not make arrangements for payment on 20-3-2007 and the said fact was brought to the notice of the respondent-Bank. The petitioner went to the respondent-Bank on 30-3-2007 along with sanctioned

assurance letter of the Andhra Bank for a sum of Rs.78,48,000/- and demand draft for Rs.6,26,000/- and the same was received by the respondent-Bank under acknowledgement. The petitioner also approached on 31-3-2007. The respondent-Bank ought to have honoured the commitment of another Nationalised Bank and it cannot turn down stating that it is not complying with the terms of the bid. What is important for the respondent-Bank is receipt of the amount either directly or through another counter part viz., Andhra Bank, another Nationalised Bank. Further, the petitioner had approached the respondent-Bank with three demand drafts apart from assurance letter of the Andhra Bank. The respondent having referred the matter to Central Office for consideration, ought to have waited for the approval from the Central Office and could have finalized the deal with the petitioner. It is reiterated that the petitioner had been always ready with money for payment, but the respondent-Bank alone had faulted in receiving the payment. Further, the respondent-Bank having referred the matter to the Central Office ought to have convinced the Central Office since the amount guaranteed was by another Nationalised Bank. In reply to para-11, it is stated that the letters written by the petitioner

speak volumes about the facts and they never intended to mislead the people as alleged. The respondent-Bank is confusing the public by describing the property in two different ways in both the notifications and the respondent-Bank never mentioned fact of the property not having the sanction of approved lay out and there is no permission for converting agricultural land for non-agricultural use. The respondent-Bank had prepared the payment schedule knowing fully well that there are holidays intervening the period and the same had been done only to see that the petitioner fails and a third party can be helped. Though the respondent-Bank did not mention the payment schedule deliberately and only when disinterested person became the highest bidder to see that he fails, a quick time schedule is prepared without affording reasonable time for payment. Further, the respondent-Bank having refused to receive the amounts cannot turn around and say that the petitioner was not ready with the money. Further it is stated in para-14 of the reply affidavit that if the amount payable by the petitioner is received, the respondent-Bank would be benefited since the amount payable by the petitioner together with interest comes to Rs.5.82 Crores whereas if the respondent-Bank were to receive the amount from a third party, it would get Rs.5.70 crores only, but the Bank

is yielding towards third party who would pay less amount than the petitioner and the same speaks the conduct of the respondent-Bank. Further, it is stated in reply to the averments in para-16 that the respondent-Bank having refused to receive Rs.2.76 Crores as per the stipulation made in the order of this Court, cannot throw the blame on the petitioner that the petitioner was not ready with the money. The ground taken by the respondent-Bank for refusal was that the order of this Court was not received though in fact a copy of the order was furnished. The question of interim stay automatically getting vacated does not arise and the respondent-Bank ought to have complied with the interim order of this Court by accepting the payment of Rs.2.76 Crores and subsequent amounts. The petitioner obtained acknowledgement from the respondent-Bank to the effect that the petitioner offered Rs.2.76 Crores which was not received for obvious reasons. Even the said fact was brought to the notice of the Central Office of the respondent-Bank by the petitioner. Further it is stated that the respondent-Bank had played fraud with the public money by not disclosing about the plots not being in consonance with the approved layout sanction from the competent authority and to get over this lacuna, the respondent-Bank

deliberately described the property in two different ways in the notifications. Having disobeyed the interim order of this Court by refusing to receive Rs.2.76 Crores from the petitioner on 24-5-2007, the respondent-Bank cannot find fault with the petitioner. It is reiterated that the petitioner has financial capacity to pay the bid amount together with interest. Even now, the petitioner is ready to pay the bid amount immediately provided the respondent-Bank removes the defects to the property as aforementioned and gives a marketable property. This is the stand taken in the reply affidavit.

11. Certain of the relevant papers placed before this Court, viz., Memo No.878/04-B1(Pts) dated 25-8-2005, Lr.Roc.No.3750/2005/II/AIR, dated 16-6-2005, Roc.No.1318/07-B4(Pts) dated 16-10-2007, Lr.Roc.No.10054/2007/V.Cell(RTI), dated 5-10-2007 and Lr.Roc.No.10288/2007/V.Cell(RTI), dated 10-10-2007, may be glanced at for the purpose of appreciating the stand taken by the writ petitioner and the said proceedings read as hereunder :

Government of Andhra Pradesh

Memo No.878/04-B1 (Pts) Office of the
Dated 25-08-2005 Collector (Pt.Wing),
Nalgonda

M E M O

Sub:- Annual Inspection – Gram Panchayat,

Toopranpet – Annual Inspection on Town Planning Activities of Toopranpet Gram Panchayat – District Nalgonda – Conducted by the Regional Deputy Director, Town & Country Planning, Hyderabad on 7-4-2005 – Report forwarded – Compliance report – Requested – Regarding.

***

It is informed that, as per the report of the Regional Deputy Director, Town & Country Planning, Hyderabad, it is observed that, all existing layouts of Gram Panchayats are not incomplete shape with the valid approval or having shortfall of all in layout development works or open spaces or road widths, etc., as per these layout rules shall be got regularized first without which no building permission shall be entertained or accorded. The regularization would be based on levy of private changes or shortfall of open spaces, collection of private betterment charges and development charges and improvement of the road pattern and drainage etc., which has to be borne by the owners of the plots colony. (A copy of the Regional Dy.Director of Town & Country Planning, Hyderabad is enclosed).

Therefore the Panchayat Secretary, Gram Panchayat, Toopranpet is directed to verify and submit the stage of present position of the layouts existing in the Gram Panchayat, Toopranpet as per the G.O.Ms.No.67, PR&RD, dated 26-02-2002 through the Divisional Panchayat Officer, Bhongir immediately for taking necessary action in the matter.

//By Order//

Sd/- M.Gangaram

For DISTRICT COLLECTOR (Pt.Wing),
Nalgonda.

Encl.(1)
To
The Panchayat Secretary, Gram Panchayat,
Toopranpet.
Copy to the Divisional Panchayat Officer, Bhongir for
necessary action.
Copy to the Dy. Director of Town & Country Planning,
Hyderabad for information.
Copy to the Director, Town & Country Planning, Hyderabad
for information.

"GRAMS STAPTHI"
Government of Andhra Pradesh

From
The Director of Town and Country Planning,
Government of Andhra Pradesh,
640, A.C. Guards,
Hyderabad-500004.

To
The Commissioner,
Panchayat Raj & Rural Development
Department,
Govt.of A.P.
Hyderabad.

Lr.Roc.No.3750/2005/II.AIR, Dt.16-6-2006

Sir,

Sub:- Annual Inspection – Toopranpet Gram Panchayat – Annual Inspection on Town Planning activities of Toopranpet Gram Panchayat, Nalgonda District – Conducted by the R.D.D.T.P., Hyderabad on 7-4-2005 – Report forwarded –

Compliance report – Requested – Regarding.

***

I enclose herewith a copy of Annual Inspection Report on the Town Planning activities of Toopranpet Gram Panchayat, Nalgonda District conducted by the Regional Deputy Director of Town and Country Planning, Hyderabad on 7-4-2005 and request you to forward a copy of the Inspection report to the District Panchayat Officer, Nalgonda District with instruction to obtain the compliance report from the Panchayat Secretary, Toopranpet Gram Panchayat and submit the same to this office along with his remarks for taking further action the matter and also request you to direct the Panchayat Secretary, Toopranpet Gram Panchayat not to entertain any unauthorised layouts and not to issue building permissions in unauthorised layouts without prior approval of layouts and to follow the guidelines issued in G.O.Ms.No.67, PR&RD Department, dated 26-2-2002.

Yours faithfully,
Sd/-
Director of Town and
Country Planning

Enclosures: As above.

Copy to: The District Collector, Nalgonda District along with
a copy of Annual Inspection report for taking further necessary action.

Copy to: The District Panchayat Officer, Nalgonda District
along with a copy of Annual Inspection Report for taking necessary action in the matter.

Copy to : The Panchayat Secretary, Toopranpet

Gram

Panchayat along with a copy of Annual Inspection Report for taking further necessary action in the matter.

Copy to : The Regional Deputy Director of Town and Country

Planning, Hyderabad for necessary action.

Government of Andhra Pradesh

From To

Sri Jeevanachary, B.A. The Managing Partner,

District Panchayat Officer, M/s.Meher & Co.

Nalgonda. Hyderabad.

Roc.No.1318/07/-B4(Pts.), dated 16-10-2007

Sir,

Sub:- LAYOUTS – Gram Panchayat, Toopranpet – Mandal Choutuppal – Sanction of Layout in Sy.No.22, 23, 29, 33 and 36 at Toopranpet village – Unauthorised sanction of Layout – Intimated – Regarding.

Ref:- 1) The Managing Partner, M/s.Meher & co., Hyderabad,

Ref.No.136/2007, dated 8-10-2007.

2) The Directorate of Town & Country Planning, Hyderabad,

Lr.Roc.No.10054/2007/V.Cell(RTI), dated 5-10-2007.

3) The District Panchayat Officer, Nalgonda, Memo

No.1318/07-84(Pts.), dated 9-10-2007.

4) The Divl.Panchayat Officer, Bhongir, Lr.No.123/07-

B(Pts.), dated 15-10-2007.

5) The Directorate of Town & Country Planning, Hyderabad, Lr.No.10288/2007/V.Cell(RTI),

dated
10-10-2007.

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In view of the references cited, it is hereby informed that, the sanction of layout in Sy.Nos.22, 23, 29, 33 and 36 at Toopranpet village of Choutuppal Mandal is not valid and not to proceed illegal activities for further unauthorised building permissions without prior approval of the layout department as reported by the Divisional Panchayat Officer, Bhongir. Hence informed.

Yours faithfully,
Sd/-
District Panchayat Officer,
Nalgonda

Copy to the Divisional Panchayat Officer,
Bhongir.

By R.P.A.D.
GRAMS: "STAPATHI" PHONE: 23323176

Government of Andhra Pradesh

From:
The Directorate of Town and Country Planning,
Government of Andhra Pradesh,
640, A.C. Guards,
Hyderabad-500004.

To
Sri B.Prabhakar Rao,
Managing Partner,
M /s. Meher & Co.,
84, HUDA complex,
Tarnaka,
Hyderabad.

Lr.Roc.No.10054/2007/V.Cell(RTI), dated 5-10-2007

Sir,

Sub:- RTI Act, 2005 – Clarification regarding the layout approvals by the Gram Panchayats – Regarding.

Ref:- Your application dated nil (received in this office on 27-9-2007)

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With reference to your application cited, I am to inform you that as per G.O.Ms.No.377, PR Department., dated 12-10-1973, the Gram Panchayats have to sanction layouts only on receipt of the recommendations from the Director of Town & country Planning. Further, as per G.O.Ms.No.67, PR Department., dated 26-2-2002, the Gram Panchayats shall accord layout approvals only after obtaining prior technical approval from the Director of Town & Country Planning. Layout approvals given by the Gram Panchayats without obtaining prior technical approvals from the Director of Town & Country Planning, are not valid.

Yours faithfully,

Sd/-

Public Information Officer.

By R.P.A.D.

GRAMS: "STAPATHI" Phone: 23323176

Government of Andhra Pradesh

From: To

The Directorate of Town and Country Planning, Government of Andhra Pradesh,

Sri B.Prabhakar Rao, Managing Partner, M/s.Meher & Co., 640, A.C. Guards, # 84, HUD complex,

Hyderabad-500004. Tarnaka, Hyderabad.

Lr.Roc.No.10288/2007/V.Cell(RTI), Dated 10-10-2007

Sir,

Sub:- RTI Act, 2006 – Clarification regarding the validity of the layout plan issued by the Toopranpet G.P. – Regarding.

Ref:- Your application dated 5-10-2007.

***

With reference to your application cited, I am to inform you that the layout plan issued by the Toopranpet Gram Panchayat, which is enclosed to your application, is not valid, since the Gram Panchayat has not followed the due procedure as laid down in G.O.Ms.No.67, PR dated 26-2-2002 i.e., the Gram Panchayat has not obtained prior technical approval from the Director of Town & Country Planning before issuing the layout.

In this connection, I am also to inform you that the Government vide G.O.Ms.No.480, RP, dated 28-7-1988, has clarified that the Gram Panchayat does not have independent power for sanction of a layout. The Government have also stated that layouts sanctioned by the Gram Panchayats without recommendations of the Director of Town & Country Planning are irregular and unauthorised.

The above information is furnished under the RTI Act, 2005.

Yours faithfully,

Sd/-
Public Information Officer.

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12. In **Sterling Computers Ltd. Vs. M&N Publications Ltd.** [1] the Apex Court observed at paras 12 and 15 as hereunder :

> "At times it is said that public authorities must have the same liberty as they have in framing the policies, even while entering into contracts because many contracts amount to implementation or projection of policies of the Government. But it cannot be overlooked that unlike policies, contracts are legally binding commitments and they commit the authority which may be held to be a State within the meaning of Article 12 of the Constitution in many cases for years. That is why the courts have impressed that even in contractual matters the public authority should not have unfettered discretion. In contracts having commercial element, some more discretion has to be conceded to the authorities so that they may enter into contracts with persons, keeping an eye on the augmentation of the revenue. But even in such matters they have to follow the norms recognized by courts while dealing with public property. It is not possible for courts to question and adjudicate every decision taken by an authority, because many of the Government Undertakings which in due course have acquired the monopolist position in matters of sale and purchase of products and with so many ventures in hand, they can come out with a plea

that it is not always possible to act like a quasi-judicial authority while awarding contracts. Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bona fide manner although not strictly following the norms laid down by the courts, such decisions are upheld on the principle laid down by Justice Holmes, that courts while judging the Constitutional validity of executive decisions must grant certain measure of freedom of "play in the joints" to the executive.

……..

There is nothing paradoxical in imposing legal limits on such authorities by courts even in contractual matters because the whole conception of unfettered discretion is inappropriate to a public authority, who is expected to exercise such powers only for public good".

13. In **MASTER MARINE SERVICES PVT. LTD. VS. METCALFE AND HODGKINSON PVT. LTD.** [2], the Apex Court observed as hereunder :

"The law relating to award of contract by State and public sector corporations was reviewed in *Air India Ltd. v. Cochin International Airport Ltd.* (2000) 1 J.T. 481) and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free

to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere."

14. Certain submissions were made that in the light of the aforesaid proceedings and also in the light of the tender notification being devoid of all the material particulars, the defective title in relation to the properties in question may have to be clarified by the Bank. This Court on a careful analysis of the respective stands taken by the parties, is thoroughly satisfied that the writ petitioner is taking such a stand which is only an after-thought. Having been unsuccessful in making the payment of instalments within the stipulated time and after some correspondence at a belated stage, the petitioner is coming up with the present version that the petitioner is

prepared to pay the total amount with interest also, if directed. Further, yet another stand had been taken that even now the offer which had been made by the petitioner being more beneficial to the respondent-Bank, it would be just and proper to accept the same. It is needless to say that it is for the respondent respondent-Bank to take a decision in this regard. In the light of the subsequent steps taken by the respondent-Bank, especially in the light of the limitations imposed on this Court in exercising the power of judicial review under Article 226 of the Constitution of India in the realm of contractual field, this Court is thoroughly satisfied that this is not a fit case to be interfered with. However, in the light of the peculiar facts and circumstances, the petitioner is at liberty to make a representation to the respondent-Bank relating to the refund of the amount and let the respondent-Bank consider such representation, if any, to be made by the petitioner in proper perspective on the grounds of justice, equity and good conscience. Except making the above observation, no further relief can be granted.

15. Accordingly, the Writ Petition shall stand dismissed. No order as to costs.

_____

Justice P.S.Narayana

Date : -11-2007

L.R. copy to be marked : YES / NO

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[1] **(1993) 1 SCC 445**
[2] **(2005) 6 SCC 138**